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STATE OF COLORADO

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LLS NO. 18-0548.01 Michael Dohr x4347

COMMITTEE BILL

Committee on Legal Services

BILL TOPIC: "Title 12 Relocation Parental Notification"

A BILL FOR AN ACT

101 **CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED**
102 **TO THE COLORADO PARENTAL NOTIFICATION ACT FROM TITLE**
103 **12, COLORADO REVISED STATUTES, AS PART OF THE**
104 **ORGANIZATIONAL RECODIFICATION OF TITLE 12.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Committee on Legal Services. Current law directs the office of legislative legal services to study the organizational recodification of title 12, Colorado Revised Statutes, which relates to professions and

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

occupations. To implement the initial recommendations of the study, **section 1** of the bill relocates article 37.5 of title 12, "Colorado Parental Notification Act", to a new part in article 22 of title 13, Colorado Revised Statutes. **Section 2** of the bill makes a conforming amendment and **section 3** repeals the article where the law was previously codified.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** part 7 to article 22 of title 13 as follows:

PART 7

COLORADO PARENTAL NOTIFICATION ACT

13-22-701. [Formerly 12-37.5-101] Short title. This article PART 7 shall be known and may be cited as the "Colorado Parental Notification Act".

13-22-702. [Formerly 12-37.5-102] Legislative declaration.

(1) The people of the state of Colorado, pursuant to the powers reserved to them in Article V of the Constitution of the state of Colorado, declare that family life and the preservation of the traditional family unit are of vital importance to the continuation of an orderly society; that the rights of parents to rear and nurture their children during their formative years and to be involved in all decisions of importance affecting such minor children should be protected and encouraged, especially as such parental involvement relates to the pregnancy of an unemancipated minor, recognizing that the decision by any such minor to submit to an abortion may have adverse long-term consequences for her.

(2) The people of the state of Colorado, being mindful of the limitations imposed upon them at the present time by the federal judiciary in the preservation of the parent-child relationship, hereby enact into law

1 the following provisions.

2 **13-22-703. [Formerly 12-37.5-103] Definitions.** As used in this
3 ~~article~~ PART 7, unless the context otherwise requires:

4 (1) "Minor" means a person under eighteen years of age.

5 (2) "Parent" means the natural or adoptive mother and father of
6 the minor who is pregnant, if they are both living; one parent of the
7 minor if only one is living, or if the other parent cannot be served with
8 notice, as hereinafter provided; or the court-appointed guardian of such
9 minor if she has one or any foster parent to whom the care and custody
10 of such minor shall have been assigned by any agency of the state or
11 county making such placement.

12 (3) "Abortion" for purposes of this ~~article~~ PART 7 means the use
13 of any means to terminate the pregnancy of a minor with knowledge that
14 the termination by those means will, with reasonable likelihood, cause
15 the death of the minor's unborn offspring.

16 (4) "Clergy member" means a priest; a rabbi; a duly ordained,
17 commissioned, or licensed minister of a church; a member of a religious
18 order; or a recognized leader of any religious body.

19 (5) "Medical emergency" means a condition that, on the basis of
20 the physician's good-faith clinical judgment, so complicates the medical
21 condition of a pregnant minor as to necessitate a medical procedure
22 necessary to prevent the pregnant minor's death or for which a delay will
23 create a serious risk of substantial and irreversible impairment of a major
24 bodily function.

25 (6) "Relative of the minor" means a minor's grandparent, adult
26 aunt, or adult uncle, if the minor is not residing with a parent and resides
27 with the grandparent, adult aunt, or adult uncle.

1 **13-22-704. [Formerly 12-37.5-104] Notification concerning**

2 **abortion.** (1) No abortion shall be performed upon an unemancipated
3 minor until at least 48 hours after written notice of the pending abortion
4 has been delivered in the following manner:

5 (a) The notice shall be addressed to the parent at the dwelling
6 house or usual place of abode of the parent. Such notice shall be
7 delivered to the parent by:

8 (I) The attending physician or member of the physician's
9 immediate staff who is over the age of eighteen; or

10 (II) The sheriff of the county where the service of notice is made,
11 or by his deputy; or

12 (III) Any other person over the age of eighteen years who is not
13 related to the minor; or

14 (IV) A clergy member who is over the age of eighteen.

15 (b) Notice delivered by any person other than the attending
16 physician shall be furnished to and delivered by such person in a sealed
17 envelope marked "Personal and Confidential" and its content shall not in
18 any manner be revealed to the person making such delivery.

19 (c) Whenever the parent of the minor includes two persons to be
20 notified as provided in this ~~article~~ PART 7 and such persons reside at the
21 same dwelling house or place of abode, delivery to one such person shall
22 constitute delivery to both, and the 48-hour period shall commence when
23 delivery is made. Should such persons not reside together and delivery
24 of notice can be made to each of them, notice shall be delivered to both
25 parents, unless the minor shall request that only one parent be notified,
26 which request shall be honored and shall be noted by the physician in the
27 minor's medical record. Whenever the parties are separately served with

1 notice, the 48-hour period shall commence upon delivery of the first
2 notice.

3 (d) The person delivering such notice, if other than the physician,
4 shall provide to the physician a written return of service at the earliest
5 practical time, as follows:

6 (I) If served by the sheriff or his deputy, by his certificate with a
7 statement as to date, place, and manner of service and the time such
8 delivery was made.

9 (II) If by any other person, by his affidavit thereof with the same
10 statement.

11 (III) Return of service shall be maintained by the physician.

12 (e) (I) In lieu of personal delivery of the notice, the same may be
13 sent by postpaid certified mail, addressed to the parent at the usual place
14 of abode of the parent, with return receipt requested and delivery
15 restricted to the addressee. Delivery shall be conclusively presumed to
16 occur and the 48-hour time period as provided in this article shall
17 commence to run at 12:00 o'clock noon on the next day on which regular
18 mail delivery takes place.

19 (II) Whenever the parent of the minor includes two persons to be
20 notified as provided in this ~~article~~ PART 7 and such persons reside at the
21 same dwelling house or place of abode, notice addressed to one parent
22 and mailed as provided in the foregoing subparagraph shall be deemed
23 to be delivery of notice to both such persons. Should such persons not
24 reside together and notice can be mailed to each of them, such notice
25 shall be separately mailed to both parents unless the minor shall request
26 that only one parent shall be notified, which request shall be honored and
27 shall be noted by the physician in the minor's medical record.

1 (III) Proof of mailing and the delivery or attempted delivery shall
2 be maintained by the physician.

3 (2) (a) Notwithstanding the provisions of subsection (1) of this
4 section, if the minor is residing with a relative of the minor and not a
5 parent, the written notice of the pending abortion shall be provided to
6 either the relative of the minor or a parent.

7 (b) If a minor elects to provide notice to a person specified in
8 ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION,
9 the notice shall be provided in accordance with the provisions of
10 subsection (1) of this section.

11 (3) At the time the physician, licensed health care professional,
12 or staff of the physician or licensed health care professional informs the
13 minor that notice must be provided to the minor's parents prior to
14 performing an abortion, the physician, licensed health care professional,
15 or the staff of the physician or licensed health care professional must
16 inform the minor under what circumstances the minor has the right to
17 have only one parent notified.

18 **13-22-705. [Formerly 12-37.5-105] No notice required - when.**

19 (1) No notice shall be required pursuant to this ~~article~~ PART 7 if:

20 (a) The person or persons who may receive notice pursuant to
21 ~~section 12-37.5-104 (1)~~ SECTION 13-22-704 (1) certify in writing that
22 they have been notified; or

23 ~~(a.5)~~ (b) The person whom the minor elects to notify pursuant to
24 ~~section 12-37.5-104 (2)~~ SECTION 13-22-704 (2) certifies in writing that
25 he or she has been notified; or

26 ~~(b)~~ (c) The pregnant minor declares that she is a victim of child
27 abuse or neglect by the acts or omissions of the person who would be

1 entitled to notice, as such acts or omissions are defined in "The Child
2 Protection Act of 1987", as set forth in ~~title 19, article 3, of the Colorado~~
3 ~~Revised Statutes~~ ARTICLE 3 OF TITLE 19, and any amendments thereto,
4 and the attending physician has reported such child abuse or neglect as
5 required by the said act. When reporting such child abuse or neglect, the
6 physician shall not reveal that he or she learned of the abuse or neglect
7 as the result of the minor seeking an abortion.

8 (c) (d) The attending physician certifies in the pregnant minor's
9 medical record that a medical emergency exists and there is insufficient
10 time to provide notice pursuant to ~~section 12-37.5-104~~ SECTION
11 13-22-704; or

12 (d) (e) A valid court order is issued pursuant to ~~section~~
13 ~~12-37.5-107~~ SECTION 13-22-707.

14 **13-22-706. [Formerly 12-37.5-106] Penalties - damages -**
15 **defenses.** (1) Any person who performs or attempts to perform an
16 abortion in willful violation of this ~~article~~ PART 7

17 (a) ~~(Deleted by amendment, L. 2003, p. 2364, § 7, effective June~~
18 ~~3, 2003.)~~

19 (b) shall be liable for damages proximately caused thereby.

20 (2) It shall be an affirmative defense to any civil proceedings if
21 the person establishes that:

22 (a) The person relied upon facts or information sufficient to
23 convince a reasonable, careful and prudent person that the
24 representations of the pregnant minor regarding information necessary to
25 comply with this article were bona fide and true; or

26 (b) The abortion was performed to prevent the imminent death of
27 the minor child and there was insufficient time to provide the required

1 notice.

2 (3) Any person who counsels, advises, encourages or conspires
3 to induce or persuade any pregnant minor to furnish any physician with
4 false information, whether oral or written, concerning the minor's age,
5 marital status, or any other fact or circumstance to induce or attempt to
6 induce the physician to perform an abortion upon such minor without
7 providing written notice as required by this ~~article~~ PART 7 commits a
8 class 5 felony and shall be punished as provided in section 18-1.3-401.
9 ~~C.R.S.~~

10 **13-22-707. [Formerly 12-37.5-107] Judicial bypass.**

11 ~~(1) (Deleted by amendment, L. 2003, p. 2364, § 8, effective June 3,~~
12 ~~2003.)~~

13 ~~(2)~~ (1) (a) If any pregnant minor elects not to allow the
14 notification required pursuant to ~~section 12-37.5-104~~ SECTION
15 13-22-704, any judge of a court of competent jurisdiction shall, upon
16 petition filed by or on behalf of such minor, enter an order dispensing
17 with the notice requirements of this ~~article~~ PART 7 if the judge determines
18 that the giving of such notice will not be in the best interest of the minor,
19 or if the court finds, by clear and convincing evidence, that the minor is
20 sufficiently mature to decide whether to have an abortion. Any such order
21 shall include specific factual findings and legal conclusions in support
22 thereof and a certified copy of such order shall be provided to the
23 attending physician of said minor and the provisions of ~~section~~
24 ~~12-37.5-104~~ ~~(1)~~ SECTION 13-22-704 (1) and ~~section 12-37.5-106~~ SECTION
25 13-22-706 shall not apply to the physician with respect to such minor.

26 (b) The court, in its discretion, may appoint a guardian ad litem
27 for the minor and also an attorney if said minor is not represented by

1 counsel.

2 (c) Court proceedings under this ~~subsection (2)~~ SUBSECTION (1)
3 shall be confidential and shall be given precedence over other pending
4 matters so that the court may reach a decision promptly without delay in
5 order to serve the best interests of the minor. Court proceedings under
6 this ~~subsection (2)~~ SUBSECTION (1) shall be heard and decided as soon as
7 practicable but in no event later than four days after the petition is filed.

8 (d) Notwithstanding any other provision of law, an expedited
9 confidential appeal to the court of appeals shall be available to a minor
10 for whom the court denies an order dispensing with the notice
11 requirements of this ~~article~~ PART 7. Any such appeal shall be heard and
12 decided no later than five days after the appeal is filed. An order
13 dispensing with the notice requirements of this ~~article~~ PART 7 shall not be
14 subject to appeal.

15 (e) Notwithstanding any provision of law to the contrary, the
16 minor is not required to pay a filing fee related to an action or appeal
17 filed pursuant to this ~~subsection (2)~~ SUBSECTION (1).

18 (f) If either the district court or the court of appeals fails to act
19 within the time periods required by this ~~subsection (2)~~ SUBSECTION (1),
20 the court in which the proceeding is pending shall immediately issue an
21 order dispensing with the notice requirements of this ~~article~~ PART 7.

22 (g) The Colorado supreme court shall issue rules governing the
23 judicial bypass procedure, including rules that ensure that the
24 confidentiality of minors filing bypass petitions will be protected. The
25 Colorado supreme court shall also promulgate a form petition that may
26 be used to initiate a bypass proceeding. The Colorado supreme court
27 shall promulgate the rules and form governing the judicial bypass

1 procedure by August 1, 2003. Physicians shall not be required to comply
2 with this ~~article~~ PART 7 until forty-five days after the Colorado supreme
3 court publishes final rules and a final form.

4 **13-22-708. [Formerly 12-37.5-108] Limitations.** (1) This ~~article~~
5 PART 7 shall in no way be construed so as to:

- 6 (a) Require any minor to submit to an abortion; or
- 7 (b) Prevent any minor from withdrawing her consent previously
8 given to have an abortion; or
- 9 (c) Permit anything less than fully informed consent before
10 submitting to an abortion.

11 (2) This ~~article~~ PART 7 shall in no way be construed as either
12 ratifying, granting or otherwise establishing an abortion right for minors
13 independently of any other regulation, statute or court decision which
14 may now or hereafter limit or abridge access to abortion by minors.

15 **SECTION 2.** In Colorado Revised Statutes, 25-1-1202, **amend**
16 (1)(p) as follows:

17 **25-1-1202. Index of statutory sections regarding medical**
18 **record confidentiality and health information.** (1) Statutory
19 provisions concerning policies, procedures, and references to the release,
20 sharing, and use of medical records and health information include the
21 following:

22 (p) ~~Section 12-37.5-104, C.R.S.~~ SECTION 13-22-704, concerning
23 reporting requirements by physicians related to abortions for minors;

24 **SECTION 3. Repeal of provisions being relocated in this act.**
25 In Colorado Revised Statutes, **repeal** article 37.5 of title 12.

26 **SECTION 4. Act subject to petition - effective date.** This act
27 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly
2 (August 8, 2018, if adjournment sine die is on May 9, 2018); except that,
3 if a referendum petition is filed pursuant to section 1 (3) of article V of
4 the state constitution against this act or an item, section, or part of this act
5 within such period, then the act, item, section, or part will not take effect
6 unless approved by the people at the general election to be held in
7 November 2018 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.